IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Bail Appl..No. 4119 of 2007()

CRLMP.1614/2000 of DISTRICT COURT, KASARAGOD
CRIME NO.259/02 OF MANJESHWAR POLICE STATION

.....

: PETITIONER/2ND ACCUSED

LATHEEF,
S/O LATE MOIDEENKUNHI HAJI,
NEAR UPPALA GATE, UPPALA.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. STATE REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. STATION HOUSE OFFICER, MANJESHWAR.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4119 of 2007

Dated this the 9th day of July 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution inter alia under Section 436 read with 149 I.P.C. Investigation is complete. Final report has already been filed. Committal proceedings were registered in 2000. The case has now been transferred to the list of long pending cases. The petitioner faces the predicament of a warrant of arrest issued by the learned Magistrate chasing him. According to the petitioner, he is innocent. His absence earlier was not wilful. The petitioner is willing to co-operate with the court for expeditious further progress in the case. But the petitioner apprehends that if he surrenders and applies for bail, the learned Magistrate may not consider the application for regular bail on merits, in accordance with law and expeditiously. In these circumstances, it is prayed that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

2. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be

invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I find no reason to issue directions under Section 482 Cr.P.C.also.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

4. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the

learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself. The learned counsel for the petitioner relies on the twin circumstances that the co-accused, after trial, had already been acquitted and that the petitioner was granted anticipatory bail earlier by the learned Sessions Judge. Needless to say, these circumstances shall also be taken into account by the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007